

9 JUNE 1947

I N D E X

Of

EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
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9 JUNE 1947

I N D E X
Of
WITNESSES

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1 Monday, 7 June 1947

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: LORD PATRICK, Member from the United
15 Kingdom of Great Britain and HONORABLE JUSTICE R. B.
16 PAL, Member from India, now sitting.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 - - -

20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in
3 session.

4 THE PRESIDENT: With the permission of
5 the Tribunal, the accused TOJO is conferring with
6 his counsel outside the courtroom and will do so
7 until we meet again at 11 o'clock.

8 Mr. Cunningham.

9 MR. CUNNINGHAM: I would dislike answering
10 the objections of Mr. Carr in his absence, your
11 Honors, but I presume there is no other course.

12 THE PRESIDENT: I do not know what has
13 happened to Mr. Carr. He may be ill or there may be
14 some reason why he is not here.

15 Mr. Tavenner.

16 MR. TAVENNER: I have not seen Mr. Carr
17 this morning, your Honor, but we are sending for
18 him now and will know in just a few minutes. I
19 see no objection to the reply being made in Mr.
20 Carr's absence in this particular instance.

21 THE PRESIDENT: Yes.

22 MR. CUNNINGHAM: If the Tribunal please,
23 in answer to the objection of the prosecution concerning
24 the excerpts from Mr. Davies Diary, entitled "Mission
25 to Moscow" I wish to state that if the prosecution

1 had any imagination they could read the dates from
2 the excerpts and not make it necessary to add the
3 date to each excerpt when three or more of them
4 can sometimes bear the same date. That is a petty
5 objection, as most of the others are also.

6 If the book is not a diary within the terms
7 of the Charter, then it would be interesting for the
8 prosecution to give us a definition of what they
9 consider a diary to be, under the terms of the Charter.
10 Failing in this, we might have a definition from
11 the Tribunal as to what constitutes a diary under
12 the Charter at this stage of the proceedings.

13 From my reading of the excerpts there is
14 but one opinion excerpt and I specifically omitted
15 that one, but the prosecutor wasn't paying attention
16 apparently and covered it in his objection. Unfortun-
17 ately for my country, our foreign policy towards
18 Russia was determined to a certain extent upon the
19 opinion of such men as Mr. Davies. Our President
20 relied pretty much upon his reports, which history
21 will have to judge as to their value. I am only
22 asking here that the facts in the excerpts be taken
23 as evidence, their value to be determined as the
24 evidence develops.

25 As to the first objection, if the fact that

1 Russia and Japan were not speaking to each other in
2 1938, and this is trivial and irrelevant, then
3 they have changed their theory of the case in mid-
4 stream. The Russian side of the prosecution may
5 not appreciate such a remark, at least that is not
6 my understanding of their attitude.

7 If evidence of the Russian two-faced policy
8 towards Japan while aiding China does not show a
9 desire to cause upheaval in Asia between the two
10 nations and then step in, as she is doing through
11 communism today in China, is not material to this case,
12 then maybe our theory of the cause of the Pacific
13 War is not as raised by the Indictment and specifications.
14 Asia then, and Asia today suffered and is suffering
15 from Russian interference or communistic interference
16 with the establishment and maintenance of peace. Yes,
17 Russian aid to China was a vital factor preventing
18 peace between China and Japan.

19 The third and fourth objections so twist
20 the facts that I shall not dignify them by answering
21 them.

22 The fifth deals with the Soviet budget
23 on preparation for war. The evidence introduced
24 during this last week shows pretty well the relevancy
25 of this item.

1 The other objections are trifling and only
2 take up time. On this matter of time I should like
3 to make an observation. It has required about forty-
4 five minutes to argue the admissibility of a document
5 which would require about eight minutes, at my speed,
6 to read. In the light of the fact that the Charter
7 provides that these defendants are entitled to an
8 expeditious hearing, this appears to me to be a
9 colossal waste of time and energy, especially when
10 I am only asking the Tribunal to accept the evidence
11 for what it is worth. I can vividly recall how we
12 were ridiculed by the Court when we were making
13 objections on the brief grounds of relevancy and
14 probative value. I believe the document should be
15 admitted on the usual terms.

16 MR. COMYNS CARR: Your Honor, the prosecution
17 would like to protest against the repeated attempt
18 to introduce present-day political controversies into
19 this discussion.

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1 THE PRESIDENT: Alone of all counsel, Ameri-
2 can and otherwise, Mr. Cunningham has endeavored to
3 introduce political discussion here. How shallow,
4 how hollow it all sounds when we know that the only
5 hostility displayed by Japan toward Russia was in
6 connection with border incidents. She did not
7 declare war against Russia. On the other hand, she
8 attacked the two great protagonists of democracy,
9 America and Britain. She endeavored to destroy the
10 only two nations in the world who could have combatted
11 totalitarianism in any form.

12 Mr. Cunningham knows that all we can do is
13 suspend him, but that does not mean anything to him.
14 We have no power to discipline him. If we suspended
15 him he would probably take his seat in the press
16 gallery at the expense of the Allied Powers to the end
17 of the case. We can only rely on his sense of decency.
18 We have relied on the sense of decency of American
19 counsel, and so far none of them has failed us, with
20 one or two exceptions.

21 MR. CUNNINGHAM: If your Honor please, may
22 we consider the pronouncement of the Court as a deter-
23 mination of the issues concerning the Russian question
24 to date?

25 THE PRESIDENT: Individual defendants will

1 be at liberty to say to what extent they were affec-
2 ted by their outlook on ideologies of different
3 sorts. But we are dealing with the facts of the
4 phases now and not with any honest and reasonable
5 belief that any individual accused may have enter-
6 tained. That, we have repeatedly stressed, is a
7 different matter.

8 MR. CUNNINGHAM: I should like to make one
9 observation of your prediction on my course of con-
10 duct. I wish to assure you that I am very anxious to
11 get home from this case and I wouldn't want to rest
12 here one additional moment longer than necessary to
13 do my duty.

14 THE PRESIDENT: By a majority the Court
15 upholds the objection and rejects the document.

16 Major Furness.

17 MR. FURNESS: If the Court please, we must,
18 with the greatest respect, protest against statements
19 by the Tribunal that Japan attacked Great Britain and
20 the United States and attempted to destroy them.
21 The evidence with regard to what we call the Pacific
22 Phase has not yet been submitted to the Court, and
23 the issues have not yet, we assume, been decided.
24 These matters are fundamental issues which are to
25 come before the Court for decision. Such remarks have

1 been made twice, and as I say, we must protest against
2 them. We do it with the greatest respect.

3 THE PRESIDENT: And with equal respect I
4 assert that I have made no statement implicating any
5 individual accused.

6 MR. FURNESS: The accused, your Honor, are
7 charged, as agents of the government, as controlling
8 the government. These are general phases we are
9 presenting, and we expect to present evidence on that
10 general phase in general defense.

11 MR. TAVENNER: If the Tribunal please, I think
12 it is time to inquire of defense counsel if they con-
13 tend that the United States attacked Japan at Pearl
14 Harbor.

15 MR. CUNNINGHAM: May we proceed now, your
16 Honor?

17 I now re-offer in evidence defense document
18 1316, which is an excerpt taken from an interrogation
19 conducted in English at Muernberg, Germany, by United
20 States Army officers of J. von Ribbentrop, Foreign
21 Minister of Germany, who signed the Anti-Comintern
22 Pact in behalf of Germany on November 28, 1936, in
23 which he explains the purposes of the attack and some
24 of the considerations which entered into its execution.
25 This offer is made in view of the difference of the

1 composition of the Tribunal from its membership when
2 this very important document was rejected last Friday.
3 I re-offer defense document 1316.

4 THE PRESIDENT: Mr. Comyns Carr.

5 MR. COMYNS CARR: And I ask the Tribunal to
6 come to the same conclusion as before. In view of
7 the fact that the Tribunal is not constituted exactly
8 as it was on Friday, I must briefly repeat the objec-
9 tion or objections.

10 The first and minor one is that the docu-
11 ment is not in English and that almost all the im-
12 portant words are in German and are, to some of us at
13 least, unintelligible.

14 The major objection is that while anything
15 Ribbentrop said to the Japanese at the time or which
16 they said to him would be highly material, it is
17 immaterial to consider what was in the mind of Ribben-
18 trop.

19 THE PRESIDENT: You need not go any further
20 on this, Mr. Carr. You understand clearly, if Mr.
21 Cunningham does not. The decision of this court may
22 depend, and does depend, upon its constitution from
23 time to time, but once it arrives at its decision on
24 a document it adheres to that decision.
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The document is again rejected.

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1 MR. CUNNINGHAM: Well, I do not wish to appear
2 impertinent, your Honor, but I would like to have a poll
3 of the Tribunal as to how the vote stood. I think it
4 is within my right to do that. Mr. Keenan asked for
5 that in the Russian phase of the case when we were
6 determining what language was the official language of
7 this Tribunal.

8 THE PRESIDENT: I will gladly take a vote
9 among my colleagues if any one of them asks me to do
10 so.

11 MR. CUNNINGHAM: Well, your Honor, in making
12 this offer I relied pretty much upon what you said
13 Friday, that if another Member of the Court would be
14 here the decision might be different. And certainly
15 with an important document like this --

16 THE PRESIDENT: Once the Court gives its
17 decision, no matter how constituted, on a document,
18 that decision stands. That is so in all courts.

19 MR. CUNNINGHAM: I might suggest that in the
20 United States Supreme Court we have a right to ask for
21 a rehearing after the Court has made its decision; and
22 the same thing applies in the Supreme Court of my state,
23 and I have had the experience.

24 THE PRESIDENT: Well, no Member of the Court
25 desires another vote be taken, so one will not be taken.

1 MR. CUNNINGHAM: That concludes the presentation
2 of the documents and the evidence with the exception
3 of one witness, who was stood down twice, whose affidavit
4 is still in the process of presentation.

5 THE PRESIDENT: Mr. Comyns Carr.

6 MR. COMYNS CARR: Your Honor, might we point
7 out that the documents tendered on the list just com-
8 pleted have involved, by moderate calculation, the
9 consumption in English and Japanese copies of 20,000
10 sheets of paper. My learned friend has informed us
11 on a previous occasion that that does not interest him,
12 but we understand that it interests the Tribunal.

13 MR. CUNNINGHAM: If your Honor please, in
14 answer, on last Friday you charged me that I made my
15 motion to strike the documents in the German-Japanese
16 phase of the case through resentment. I want to say
17 that this is not true. I have no resentment when the
18 Court rejects evidence which meets all of the standards
19 set in the prosecution's case according to my judgment.
20 The rejection of documents which are clearly admissible
21 to me under the Charter and rules heretofore applied
22 prove one point which I have contended during the year
23 we have spent, to wit: that an Allied court is not
24 competent to determine the issues in this case.

25 My motion was made because I, too, think that

1 any evidence of German-Japanese international relations
2 is irrelevant and immaterial because nations, being
3 only abstract sovereign entities, cannot be held for
4 crime; by the same token, neither can their statesmen,
5 the amended Charter of this Tribunal notwithstanding.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: If I may be permitted to inter-
8 rupt, I think such a motion is entirely out of order
9 at this stage of the case. If such a motion is to be
10 seriously presented, it should be filed with the Tribunal
11 and passed on under other circumstances.

12 THE PRESIDENT: A number of my colleagues
13 have registered protests with me against hearing Mr.
14 Cunningham at all on this matter.

15 MR. CUNNINGHAM: Well, I should like to make
16 my record, your Honor, and I think that is within my
17 right -- to make my record and make my offer, and what
18 the Court does with it, that is something else.

19 Therefore, I move to strike from the record
20 in this case all of the documents from number 479 to
21 609 for the reason that since their acceptance on the
22 usual terms, which means subject to being shown to have
23 probative value and relevance to the issues, they are
24 under the present practice in this Tribunal objection-
25 able. They raise an issue -- they raise an international

1 political issue, which the Court has decided by its
2 rejection of evidence need not be met.

3 THE PRESIDENT: No Member of the Court has
4 intimated to me that he is in favor of the motion, so
5 it is rejected.

6 Major Blakeney.
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1 MR. BLAKENEY: The Tribunal has directed
2 argument on the often-repeated request of the defense
3 for the corporeal production for cross-examination of
4 the numerous witnesses who testified by affidavit in
5 the Soviet phase of the prosecution's case. To define
6 the question precisely, it is whether, in the absence
7 of production for cross-examination of these witnesses,
8 thirteen in number still living, their testimony should
9 be stricken from the record and disregarded. What I
10 have to say applies, mutatis mutandis, as well to a
11 few witnesses who appeared in other parts of the pros-
12 ecution case.

13 There is little enough for the movant to say
14 on this point. It is unnecessary for us to dwell upon
15 what our common-law training has taught us to regard
16 as the sacred right of one accused of crime to be con-
17 fronted by his accusers. This Tribunal requires no
18 disquisition from me on the pitfalls of hearsay testi-
19 mony or the tendencious character of ex parte evidence.
20 I can, however, perhaps usefully point out some of the
21 special features of this testimony which make the case
22 an aggravated one. By way of preface I might say that
23 of the witnesses in question, 12 are former Japanese
24 soldiers, 9 of them generals, who were taken prisoner
25 of war by the Soviet forces in August 1945. For near

1 on twenty-two months now they have remained, prisoners
2 of war, in Siberia or European Russian, though it is
3 matter of common knowledge that millions of Japanese
4 prisoners of war have been repatriated from more remote
5 regions of the earth, in the face of greater difficul-
6 ties. Of these 12 prisoners of war 3 are stated by
7 the Soviet authorities themselves to be ordinary
8 prisoners of war, and there is therefore no apparent
9 reason for their continued detention unless it be to
10 prevent them from becoming available for cross-examina-
11 tion. Five of them, and one civilian, are testified by
12 the same Soviet authorities to be under investigation
13 on suspicion of having committed crimes against the
14 U.S.S.R. Under suspicion, not charge -- after twenty-
15 two months; after this most complex and elaborate trial
16 has been in progress for over thirteen months. Again,
17 there is no apparent reason for failure to prefer
18 charges or set them at liberty, unless we are to draw
19 an easy inference. Others of these witnesses -- 3 of
20 them -- are Soviet nationals, and in state service and
21 subject to orders.

22 The character of the testimony extracted from
23 these witnesses, moreover, is unsatisfactory in the
24 extreme. "Unsatisfactory" is, in truth, a gross under-
25 statement. We may stigmatize the testimony as being a

1 hodge-podge of opinion, conclusion, affirmative answers
2 to flagrantly leading questions, hearsay compounded
3 upon hearsay, self-contradictions, surmise -- all of
4 which it is -- without adequately depicting it. It
5 must be read to be believed. I shall presently cite
6 a few examples.

7 One or two other points, also, must be men-
8 tioned. The prosecution have made it their business
9 to try to draw an analogy between the type of evidence
10 now under consideration and the evidence produced by
11 way of affidavit, in a few instances, by the defense.
12 It must be perfectly clear -- I say this with no
13 malicious intent -- that the cases are poles apart.
14 The prosecution had the option which witnesses they
15 would produce. The defense had none -- the defense
16 had neither the power to bring witnesses from without
17 Japan nor the right to have subpoenas issued to compel
18 their attendance. The only right of the defense was
19 to pray the Tribunal, as a matter of grace, to issue
20 process. In the few instances that process has issued
21 at the behest of the defense, it has been in nearly every
22 case ignored, and has in no case produced the body of
23 a witness -- in almost no case.

24 The argument has already been advanced by the
25 Soviet prosecutor, and I may as well deal with it now,

1 that the defense is protected in the absence of the
2 witness by the right to administer interrogatories; and
3 he further points out that the defense have not chosen
4 to avail themselves of this right in the case of the
5 witnesses now under discussion. It is true that, for
6 a variety of reasons which commend themselves to us, we
7 have not considered it worth while to offer interroga-
8 tories to be administered to witnesses imprisoned
9 behind the Iron Curtain. In our view, it is a vain
10 hope and a futile endeavor to attempt the eliciting of
11 favorable testimony, adverse to his captors, from a
12 man with a gun in his back. The character of the testi-
13 mony in the affidavits themselves is the negation of
14 any such foolish expectation.

15 On the whole, our experience to date with
16 interrogatories cannot be said to have been happy. We
17 have been able to obtain some few affidavits of wit-
18 nesses living in America or Britain. Beyond that,
19 almost nothing --

20 THE PRESIDENT: General Vasiliev.

21 GENERAL VASILIEV: Your Honor, I categorically
22 protest against such insolent attacks on the Soviet
23 Union as have been made by Mr. Blakeney. The Tribunal
24 has repeatedly warned the defense to try to fan political
25 passion at this trial. And it is not the first time

1 that the defense insulted the country that I have the
2 honor to represent here and is represented by one
3 member of the Tribunal. I wouldn't deem it necessary
4 to object to the attacks made on my country here in the
5 Tribunal, and to take up the time of the Tribunal each
6 time, but this is carrying things too far and I cer-
7 tainly must apply to the Tribunal for protection. If
8 Mr. Blakeney wants to win the spurs on the Anti-Soviet
9 arena, that is his personal matter, but our country
10 has deserved the right not to be insulted in this
11 Tribunal.-- to say nothing that these numerous attacks
12 are absolutely irrelevant. I ask the Tribunal to re-
13 act to these numerous attacks which have become quite
14 intolerable.

15 MR. BLAKENEY: Counsel's remarks are not
16 only offensive but they are irrelevant. I am making a
17 legal argument which applies equally to any and all
18 countries who may have presented evidence in the manner
19 here under consideration. I have nothing else to add.

20 THE PRESIDENT: Well, we trust all counsel to
21 put their points without offense, without unnecessary
22 offense, to any of the allied powers. That can be done
23 without resorting to vituperation or anything of that
24 nature.

25 MR. BLAKENEY: And, I trust, is being done. If

1 the facts are unpalatable to counsel, I am sorry, but
2 I am trying to state them as objectively as possible.

3 I was speaking of experience with interrog-
4 atories.

5 THE PRESIDENT: General Vasiliev, for the
6 time being, that intimation to Mr. Blakeney should be
7 sufficient.

8 MR. BLAKENEY: I was speaking of interrogator-
9 ies. So far as concerns my own individual experience,
10 on behalf of my two clients, I have succeeded in
11 obtaining one completed interrogatory - it took me,
12 with diligence, just eight and one-half months from
13 the date of the Tribunal's order for a subpoena until
14 I received the answers. In other cases, the interrog-
15 atory has gone off into the void of inter-governmental
16 space, and all efforts have succeeded in detecting no
17 trace of its course; or after long pursuit we learn
18 that the document has been lost in Singapore, or some
19 such far off place; or that the witness himself is
20 lost in some tropic Never-Never Land.
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1 To come now to details of the evidence
2 of individual witnesses. We may as well take them
3 in chronological order, which, by chance, brings
4 us to commence with Semyonov, whose affidavit is
5 in all respects illustrative of the points in-
6 volved. This document, Exhibit 668, transcript
7 pp 7,311 et seq., undertakes to incriminate the
8 defendants DONIHARA, KOISO, ARAKI, ITAGAKI and --
9 in dealing with an alleged conspiracy to stage the
10 Changkufeng incident -- nine others. This is one
11 of two renegade Russians who, their affidavits
12 having been taken specifically for use in this
13 trial, were then put to death approximately three
14 weeks before the affidavits were introduced into
15 evidence. In answering to the objection, based on
16 this fact, to reception of the evidence, Minister
17 Golunsky **proposed** that the test should be the ex-
18 tent to which the testimony was corroborated by
19 other witnesses. It may therefore be of interest
20 briefly to investigate this question.

21 There is almost a page in the affidavit
22 relating to plotting against the U.S.S.R. which the
23 witness alleges that he carried on under the di-
24 rection of successive chiefs of the Kwantung Army
25 Special Service Bureau. The defense attempted to

1 secure the attendance of such of those as could be
2 indentified, and did succeed in producing one, the
3 witness UKAI (Exhibit 2,688, transcript, pp 23,484
4 et seq.), who categorically denied every allegation
5 of Semyonov's concerning himself. The prosecution
6 did not see fit to cross-examine. Semyonov places
7 the Mukden Incident -- in preparation of which,
8 he boasts, he had a responsible part -- on the
9 17th, not the 18th, of September. He states that
10 the Kyowakai was established by Pu-Yi's special
11 manifesto; but the absent witnesses TAKEBE and
12 MIYAKE assert it to have been done "by the pro-
13 posal of" General HONJO. Semyonov states that
14 in 1940, "on KIOSO's initiative", was published
15 Pu-YI's manifesto on establishment of Shinto in
16 Manchoukuo, but Pu-Yi gives the credit to General
17 UMEZU, and all evidence in the case shows that in
18 1940 General KOTSO was in Tokyo, as Minister for
19 Overseas Affairs, and had no connection with Man-
20 choukuo or the Kwantung Army. Semyonov says that
21 "in 1944 I was called by Major General AKIKUSA,
22 Chief of the Kharbin Military Mission"; but AKIKUSA
23 says in his affidavit that he became chief of the
24 Harbin Mission only in February 1945. Semyonov
25 says that Pu-Yi begged his assistance in his

1 attainment to the throne of Manchoukuo; Pu-Yi con-
2 tradicts this, averring that he never took any
3 initiative whatever in this matter. This many
4 "corroborations" of this witness by others of the
5 prosecution's introduction leap to the eye in a
6 casual perusal of the affidavit. Let it be added
7 that Semyonov is an expert on Japanese conspiracy
8 to annex the Soviet Primorye, or Maritime Province,
9 from 1920 onward, and devotes six and a half pages
10 of his affidavit to discussion of this and related
11 matters prior to 1932. I have treated of this
12 evidence in somewhat more detail than is proposed
13 in other cases, it being the first example and in
14 all ways representative of the lot.

15 TAKEBE, Rokuzo, (Exhibit 670, transcript
16 pp 7,328 et seq.), implicates TOJO, UMEZU, MINAMI,
17 HOSHINO, KINURA, ARAKI, SUZUKI and OSHINA. We can
18 sufficiently savor the character of his evidence
19 if we note that it was extracted by the asking of
20 such questions as "the ultimate aim was . . .
21 wasn't it?"; "What do you think is characteristic
22 of the political and military actions of TOJO?"
23 (with the classic answer, "I think that TOJO should
24 take the responsibility of preparing for the attack
25 on Soviet Russia, and also of starting a war against

1 America and England in the South" -- the witness,
2 parenthetically, is not a military man); "What was
3 the purpose of the Japanese occupation of Man-
4 churia?", etc. This witness was subpoenaed by
5 the defense on 16 September, the difficulties at-
6 tendant upon travel in the winter weather of Siberia
7 were pointed out as reason for having the subpoena
8 recalled.

9 MIYAKE, Mitsuharu, (Exhibit 699, tran-
10 script, pp. 7,500, et seq.), having died (Exhibit
11 2,664-B) a few days after his affidavit was intro-
12 duced, he can of course not now be produced, and
13 only the alternative of the motion -- for striking
14 the testimony -- remains for consideration of the
15 Tribunal. This witness implicates ITAGAKI and
16 UMEZU, testifying to very important matters con-
17 cerning the Manchuria Incident and affairs of
18 Manchoukuo in such terms as "I suppose that"; "my
19 personal opinion is"; "as far as I understand";
20 and the like. Of MIYAKE the President stated
21 (transcript, pp. 7,504) "He is a very important
22 witness". His affidavit includes his personal
23 confession of guilt for the Manchuria Incident
24 and for preparation of war against the U S S R --
25 a not uncommon feature of these documents under

1 consideration.

2 USHIROKU, Jun, (Exhibit 703, tran-
3 script, pp. 7,515 et seq) states that that which
4 has been testified to by many other witnesses in-
5 cluding those of the prosecution to have been
6 General Staff annual operations plans, was a plan
7 for aggression against the Soviet Union.

8 TOMINAGA, Kyoji, (Exhibit 705, tran-
9 script, pp. 7,524 et seq), is the witness whose
10 production for cross-examination has been ordered
11 by the Tribunal. As was pointed out at pages
12 23,165 and following of the transcript, there has
13 been neither compliance with the order nor ex-
14 planation of non-compliance. It should there-
15 fore suffice to mention that he implicates by his
16 testimony the defendants ITAGAKI, TOJO and OSHIMA,
17 and does it by answer to such questions as "Do you
18 think who was personally responsible for Nomonkhan
19 Incident?"; "Do you confirm that TOJO had a strong
20 intention of aggression against the U S S R?"

21 MURAKAMI, Keisaku, (Exhibit 722, tran-
22 script, pp. 7,575 et seq), who was stated at the
23 time of the tender of his affidavit to be ill,
24 likewise testifies concerning his interpretation.
25 of annual operations plans, as well as the Kanto-kuen,

1 being contradicted by prosecution and defense wit-
2 nesses alike.

3 YANAGIDA, Genzo, (Exhibit 723, tran-
4 script, pp. 7,579 et seq.), apparently an expert
5 witness, testified in answer to such questions as
6 "Who among the military do you think were in favor
7 of the occupation of Manchuria?"; "From the stand-
8 point of international law and customs of war,
9 what do you think of . . .?" The answers purport
10 to incriminate, among the defendants, ITAGAKI,
11 MATSUI, MINAMI, UMEZU and HASHIMOTO.

12 The case of Rodzaevsky (Exhibit 730,
13 transcript, pp. 7,601 et seq.) is in all respects
14 like that of Semyonov, and need not be particu-
15 larized beyond saying that he attempts to incrim-
16 inate the defendants ARAKI, KOISO, ITAGAKI,
17 MINAMI, HASHIMOTO, and UMEZU.

18 Chernyopatko (Exhibit 755, transcript,
19 pp. 7,808 et seq.), and Batarshin (Exhibit 756,
20 transcript, pp. 7,811 et seq.), are two witnesses
21 who, as low-ranking Soviet officers, were eye-
22 witnesses of the Changkufeng Incident.
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1 AKIKUSA, Shun (exhibit 743, transcript
2 pages 7707 et seq.) implicates General TOJO; has much
3 to say on alleged plots involving White Russians,
4 espionage and the like; and demonstrates his ignorance
5 of his mendacity by testifying, contrary to the rest
6 of the evidence in the case, that the Kantokuen was
7 drawn up by a section chief of the Kwantung Army. He
8 answers such questions as "Do you recognize that (the
9 Changkufeng Incident) was an aggressive encounter
10 commenced by Japan?"

11 NOHARA, Komakichi (exhibit 812, transcript
12 pages 7993 et seq.) directs his testimony chiefly
13 against General OSHIMA, one of whose insignificant sub-
14 ordinates he was. Without hesitancy he reads OSHIMA's
15 mind, stating dogmatically the opinions, beliefs and
16 intentions of that defendant. This one, having made
17 his affidavit, declined repatriation to Japan and is
18 now reported (exhibit 2664-J) last heard of back in
19 Germany.

20 MATSUURA, Kusuo (exhibit 833, transcript
21 pages 8084 et seq.) is an omniscient major. Although
22 he was serving in China or Inner Mongolia, and not with
23 the Kwantung Army, until August 1943, he knows all
24 about the Kantokuen, an event of Manchuria of 1941;
25 in fact, he alone of all witnesses, I believe, adds

1 the embellishment that it applied also to the Korea
2 Army. "It was rumored" among the young officers that
3 an attack against the U.S.S.R. would occur in 1943;
4 a friend, a captain in intelligence "drew this
5 inference," and our credulous witness seems to have
6 had no further doubt of the fact. There is mention
7 in the affidavit of eight separate identifiable docu-
8 ments, no one of which is produced or accounted for.
9 One of these, the witness "thinks" had "some connection"
10 with plans for war against the Soviet Union -- but he
11 thinks so from a variety of apparently unconnected
12 and ill-explained circumstances, not from the content
13 of the document itself.

14 KITA, Seiichi (exhibit 835, transcript pages
15 8126 et seq.) implicates the defendants ITAGAKI, ARAKI,
16 KOISO, SUZUKI, OSHIMA, HIRANUMA, TOJO, UMEZU and
17 MINAMI. Of this affidavit of fourteen pages, the
18 first five are in the form of an interpretative essay
19 on conditions in China in the 1920's, the Manchuria
20 Incident and related matters. Beginning with 1927,
21 when the witness saw documents embodying the decision
22 of the Japanese Government on important matters of
23 state, he continually refers to orders and other docu-
24 ments, none of which of course is produced. For the
25 rest, he disposes of the Changkufeng and Nomonhan

1 incidents as "hostilities initiated by lawless
2 actions of the Japanese Army," and delivers similar
3 ex cathedra pronouncements setting at rest other issues
4 in the case.

5 OTSUBO, Kazuma (exhibit 837, transcript
6 pages 8159 et seq.) implicates Generals TOJO and UMEZU.
7 Of this fourteen-page affidavit -- from which the
8 prosecution read two answers -- one or two samples
9 will suffice for present purposes.

10 "Can you come to the conclusion that the
11 Commander-in-Chief of the Japanese Army made the
12 strategic deployment of the Kwantung Army in 1941,
13 for the war against Soviet?"

14 "Yes; according to my private opinion. . ."

15 "Was the Anti-Comintern Pact an anti-Soviet
16 pact?"

17 "I think it was anti-Soviet."

18 Lastly, we come to KUSABA, Tatsumi (exhibit
19 838, transcript pages 8163 et seq.), who, to oblige
20 his captors, bestowed what was intended to be the kiss
21 of death upon Generals MINAMI, DOHIHARA, ITAGAKI, TOJO,
22 OSHIMA, ARAKI and UMEZU. KUSABA himself is author
23 of the ultimate commentary upon his testimony: The
24 affidavit written, signed and sealed, the witness
25 brought to Tokyo to testify, he realized that he must

1 face the inquisition of cross-examination, and he
2 could not face it -- he took cyanide. Here are a few
3 of the questions:

4 "How can you know that MINAMI, Jiro, took
5 the leading part regarding the Manchurian occupation?"

6 "For what purpose was the Manchurian occu-
7 pation carried out by Japan?"

8 "Do you think the network of railways in
9 Manchuria was sufficient for the attack on the U.S.S.R.
10 in 1941?"

11 And, finally, "By whom was the offensive
12 plan of operations against the U.S.S.R. of 1941-42 and
13 -43 decided?"

14 Unabashed by the fact that he was in Manchuria
15 during those years, this clairvoyant plunges boldly in:

16 "It was decided by the Chief of the General
17 Staff, SUGIYAMA, Gen, the Minister of War, TOJO,
18 Hideki, and the Commander of the Kwantung Army,
19 UMEZU, Yoshijiro" -- with not one of whom does he so
20 much as intimate that he has ever spoken.

21 THE PRESIDENT: Major Blakeney, as regards
22 those men who are dead and can't be called for cross-
23 examination, you could deal with their case in your
24 summation, but not now. We are now about to determine
25 what if any witnesses who are still living should be

called for cross-examination.

1 In chambers I requested that you and
2 Mr. Tavenner should state the reasons for and against
3 calling each of them briefly. In your summation you
4 will be able to invite us, of course, not to pay any
5 attention to evidence of witnesses who made serious
6 statements against the accused but who could not be
7 called for cross-examination. What the Tribunal will
8 do will be a matter for the Members, of course. I
9 do not know.

10 We will recess for fifteen minutes.

11 (Whereupon, at 1045, a recess was
12 taken until 1100, after which the proceedings
13 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: Before reading my remaining
5 paragraph, I should like to point out, in view of
6 the President's remarks before recess, that our
7 original motion was in the alternative for pro-
8 duction of the witness or striking of the testimony.
9 I, therefore, acted upon the understanding that the
10 motion in its entirety was to be argued.

11 This, then, is the evidence upon the basis
12 of which the Soviet prosecution asks the Tribunal
13 to impose sentence, to take men's lives. We
14 think that by cross-examination it would be made
15 to appear in a different light. In fine, it
16 appears to the defense that there cannot be that
17 which the Anglo-American lawyer regards as a fair
18 trial, that that which he thinks of as justice can
19 not be done, if the Tribunal is to act upon evi-
20 dence such as that here in question. I therefore
21 respectfully renew our often-made motion that the
22 witnesses be ordered produced for cross-examination,
23 or their testimony stricken from the record and dis-
24 regarded for all purposes.

25 THE PRESIDENT: General Vasiliev.

1 GENERAL VASILIEV: One of the peculiarities
2 of this trial, unprecedented in history, say, as to
3 the scope of the inquiry, for instance, is that if
4 the Tribunal goes into the details of every fact
5 and examines every witness, many years would be re-
6 quired to complete the inquiry. In that case, a
7 lot of time would be spent, tremendous expenditures
8 incurred with a very insignificant result.

9 The danger of excessive delay of the trial
10 imperatively dictates the selection of most exped-
11 ient forms of conducting it. This is not one without
12 prejudice to the trial but, on the contrary, contrib-
13 utes to its most successful conduct. One of such
14 expedient forms is the admittance of affidavits with-
15 out calling the affiants for cross-examination.

16 Of course, I do not mean in all the cases
17 but in many cases, when considering the matter in a
18 business-like way, we can do without calling the
19 affiants for cross-examination. That was the exper-
20 ience of Nuernberg. That was in many cases the
21 practice of this Tribunal, which practice, I have
22 grounds to believe, has been persistently ignored by
23 the defense.

24 Last year, the Tribunal, in a number of cases,
25 thought it expedient to call Japanese witnesses who

1 were POW's in the USSR. I refer to the rulings of
2 May 16, July 1, July 16, and September 16. However,
3 later on in the course of the proceedings, a differ-
4 ent practice was adopted. It was suggested to the
5 defense that the affiant be examined on the spot or
6 that an interrogatory be sent. For instance, I may
7 refer to the decision of November 25, 1946. That
8 practice, in the conditions of this trial, was fully
9 entitled to be extended in the interests of the most
10 efficient conduct of the trial. In accordance with
11 that, the Tribunal granted the application of the
12 prosecution and changed its former decisions as to
13 the calling of witnesses and suggested that the
14 defense send interrogatories to all these witnesses,
15 and after the replies had been received the Tribunal,
16 if it thought fit, would reopen the question of call-
17 ing the witnesses for cross-examination.

18 I refer to the decision taken in chambers
19 on December 18, 1946. That was an absolutely correct
20 basic order. There was no reason for Mr. Blakeney to
21 contend last time that the only ground for that order
22 was the alleged reference of the prosecution to the
23 cold weather in Siberia, and that now is summer.
24 That decision of the Tribunal is a new practice,
25 formed on the basis of taking into consideration all

1 peculiar features of this trial and not based on geo-
2 graphical or climatic peculiarities of any countries.

3 The defense may say that these are different
4 witness. No. As regards a number of witnesses, these
5 are the same people whose affidavits we presented in
6 our phase: (1) MURAKAMI, (2) TAKEBE, (3) USHIROKU,
7 (4) YANAGITO.

8 To the request of the defense to call them as
9 defense witnesses, the Tribunal suggested that inter-
10 rogatories be sent. I refer to the order of November
11 12, November 25, and December 18 of the last year.
12 Have the defense sent the interrogatories? No, they
13 have not. Have the defense followed the way shown to
14 it by the Tribunal in the interests of the most effi-
15 cient conduct of the trial? No, they have not.

16 The decisions of the Tribunal as to the send-
17 ing of the interrogatories are the orders of principle.
18 The refusal of the defense to comply with those de-
19 cisions is also a refusal of principle, but in a
20 different direction. It is prejudicial to the expe-
21 ditious and efficient conduct of the trial. Precisely
22 in this light should be considered the present motion
23 of the defense.

24 The question of calling TOMINAGA for cross-
25 examination, in substance, is not different from the

question of calling other witnesses.

1 First, there was a decision of the Tribunal
2 on October 10, 1946 to call TOMINAGA for cross-
3 examination. However, when the defense filed an
4 application that TOMINAGA be called as their witness,
5 the application was refused, and the Tribunal suggest-
6 ed that an interrogatory be sent. I refer to the de-
7 cision taken in chambers on November 28, 1946. This
8 decision was taken in conformity with the new, more
9 expedient practice of the Tribunal. The Tribunal
10 dealt with one and the same person who, at the same
11 time, could not be called and not called. The Tri-
12 bunal decided not to call him.

13 Is the calling of all these witnesses serious-
14 ly needed now? I shall try to give a brief analysis:

15 TAKEBE, Rokuzo, former Chief of the General
16 Affairs Bureau of the Manchoukuo Government, exhibit
17 670, pages of the record, 7,330, 7,581, 7,598, 8,078;
18 the affiant confirms the facts established by other
19 evidence admitted by the Tribunal. In particular:

20 (1) Facts concerning the occupation of Man-
21 churia, plans of the development of the Manchurian
22 industry, the mobilization of manpower, the construc-
23 tion of military objects.
24

25 All these matters are dealt with in the

1 exhibits tendered during the Manchurian phase. Be-
2 sides, during the Soviet phase of the prosecution's
3 case, the Tribunal admitted exhibits Nos. 691-A, 700,
4 712, 713, 715, and 716.

5 (2) Facts concerning the Kan Tokuen Plan;
6 the affiant gives information about the transportation
7 of food-stuffs for the supply of the increased number
8 of troops in Manchuria. All the facts connected with
9 the Kan Tokuen are established by exhibits Nos. 779,
10 834, 832, 830, 831, 799, 639-A, and 706.

11 (3) Facts concerning the activities of the
12 Concordia (the Kyowakai) Society. The activities of
13 this society are elucidated in detail in exhibit No.
14 731-A. Besides, witnesses of the prosecution and the
15 defense, Pu-Yi (record pages 3,945-4,351), UEDA (record
16 pages 20,109-20,154), and others, were examined. The
17 defense introduced an excerpt from TAKEBE's affidavit
18 as their evidence, the excerpt dealing with the Kwan-
19 tung Army taking up a completely defensive stand in
20 1944 (record page 23,183).

21 USHIROKU, Jun, General, former Commander of
22 the 3rd Area Army of the Kwantung Army, exhibit No.
23 703, record pages 7,515 and 7,516; the affiant con-
24 firms the facts established by other evidence admitted
25 by the Tribunal. In particular:

1 (1) Facts concerning the construction of
2 railroads in Manchuria in 1932-1934, and the trans-
3 ferring of troops in Manchuria in accordance with the
4 plan of 1934-1935. Exhaustive data concerning the
5 construction of railroads in Manchuria are given in
6 exhibit No. 712, and information concerning the
7 operation plans of the General Staff is given more
8 fully in exhibits Nos. 834 and 836 (the plans of
9 1939-1943), and No. 839-A.

10 (2) The affiant gives information concern-
11 ing the Kan Tokuen from hearsay. This matter is
12 elucidated in exhibits Nos. 779, 834, 832, 830, 799,
13 and others.

14 (3) Information concerning the defensive
15 plan of 1944-1945 was not used by the prosecution,
16 but the defense used it, having read respective
17 passages from USHIROKU's affidavit, record page 23,263.
18 Besides, the defense also introduced affidavits estab-
19 lishing the contents of the plans of 1944 and 1945,
20 and their interpretation, as defensive plans, was not
21 objected to by the prosecution.
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1 TOMINAGA, Kyoji, Lieutenant General, lately
2 commander of the 139th Division of the Kwantung Army.
3 Exhibit No. 705, record page 7526, 8082.

4 TOMINAGA's affidavit deals with the following
5 questions:

6 1. Japan's military preparations in Manchuria,
7 the plans of 1940 and the Kan Tokuen. The same data
8 are established by exhibits from 706 through 716, 719-A,
9 720-A, 721-A, 779, 834, 832, 830, 831, 799.

10 2. The Nomonhan events in which the affiant
11 did not participate personally. The Nomonhan events
12 are dealt with in exhibits 761-A, 768-A and others.

13 3. The creation of the commission for drafting
14 plans of the occupational regime on the Soviet territories.
15 Similar matters were worked out by the Institute of
16 Total War, exhibit No. 690-A.

17 4. Telegrams received from OSHIMA in the
18 spring of 1943 containing requests from the German
19 Government that Japan should immediately execute arms
20 against the U.S.S.R.

21 Thus we did not bring or base any independent
22 charges against the accused with the help of TOMINAGA's
23 affidavit. It is clear from numerous exhibits mentioned
24 above.

25 MURAKAMI, Keisaku, Lieutenant General. Exhibit

No. 722, record page 7575.

1 The affiant confirms the facts established by
2 other evidence admitted by the Tribunal.

3 In particular:

4 1. Facts pertaining to the activities of the
5 Institute of Total War in 1943. This part of the
6 witness' testimony was not even read by the prosecution.
7 The activities of the Institute of Total War are elu-
8 cidated in the documents of the Institute itself sub-
9 mitted to the Tribunal. They are exhibits No. 686-A,
10 688-A, 689-A and 690-A.
11

12 2. Concerning the plan of war against the
13 U.S.S.R. in 1942 the witness testifies from General
14 NAKOMOTO's words, and he contends that he himself did
15 not see the operation plan of war. But the Tribunal
16 have at their disposal exhibits No. 834 and 836 which
17 are the testimony of a general and of an officer who
18 studied these operation plans of 1942 and worked on
19 them.

20 These witnesses, MATSUMURA, Tomokatsu, and
21 SEJIMA, Ryuzo, were already cross-examined by the
22 defense, and the witness MATSUMURA had drafted an
23 affidavit for the defense which was received by the
24 Tribunal in evidence.

25 3. Concerning the construction of strategic

1 railroads, airfields, military dumps and other military
2 objects, the witness states his observations made in
3 1938. These matters are fully dealt with in exhibits
4 No. 712, 713, 714, 715, 716 and 719-A.

5 4. The defense had objected to three questions
6 and answers in MURAKAMI's affidavit before the affidavit
7 was received in evidence. By the Tribunal's ruling this
8 part of the affidavit was deleted. It contained the
9 opinion of the affiant on the persons responsible for
10 the war, their characteristics, some information on
11 historic matters, and on the Nomonhan events. Record
12 pages 7572-7575.

13 YANAGITO, Genzo, Lieutenant General, former
14 Chief of the Harbin Special Service Agency and later
15 Chief of the defense of the Kwantung Province. Exhibit
16 No. 723, record pages 7580, 7704, 7860.

17 The affiant confirms facts established by other
18 evidence admitted by the Tribunal.

19 In particular:

20 1. He gives formal information about the
21 generals who commanded the Kwantung Army.

22 2. He speaks about the subversive activities
23 against the U.S.S.R. carried out by the Harbin Special
24 Service organ. A great deal of documentary evidence
25 dealing with this matter was produced to the Tribunal.

1 For instance, the Tribunal admitted exhibits 736-A, 737,
2 738, 740, 698, 732-A, 734-A and others.

3 3. The affiant mentions the Kan Tokuen plan
4 in connection with his having received one of the orders
5 which was thus stamped. But documents, exhibits 832,
6 830, 779 and others which elucidate this matter more
7 fully were presented to the Tribunal.

8 Major General AKIKUSA, Shun. Exhibit 743,
9 transcript pages 7707, 7816, 8077.

10 The affiant confirms the facts established by
11 other evidence admitted by the Tribunal.

12 In particular:

13 1. Facts concerning the construction of
14 railways, highways, airfields and dumps in Manchuria
15 in 1933-1936. The Tribunal has admitted exhibits No.
16 712, 713, 715, 719 which fully deal with these matters.

17 2. The affiant heard about the Kan-tokuen plan
18 in 1942 from a general staff officer, and in 1943 he saw
19 the correspondence concerning economic measures which
20 were paid from the Kan-tokuen funds. Exhibits No. 779,
21 832, 830, 799, 831, 639-A, 706 deal with measures taken
22 in accordance with the Kan-tokuen plan.

23 3. The documentary evidence (exhibits 698,
24 732-A, 734-A, 736-A, 737, 738, 740, 798 and others)
25 concerning the subversive activities of the Harbin

1 Special Service organ vis-a-vis the U.S.S.R., about
2 which the affiant speaks, is at the disposal of the
3 Tribunal.

4 4. The affiant gives certain information
5 on the clashes in the Khasan Lake area in 1938. At
6 that time he was instructor in the Intelligence Officers
7 School of the Japanese War Ministry. Lieutenant Colonel
8 Jereshkin, who took part in the fighting, and a number
9 of Japanese witness testified heretofore on the events
10 of Khasan Lake. Besides, exhibits 753, 754, 757, 758,
11 759, 751 are in the files of the Tribunal.

12 5. The prosecution did not read brief information
13 on the events in the Nomonhan area. The affiant did not
14 take part in these military operations and that part of
15 his testimony is immaterial. Exhibits 761-A, 762, 763,
16 764-A, 766, 767, 768-A deal with the events in the
17 Nomonhan area.

18 KITA, Seichi, Commanding General of the 1st
19 Area Army of the Kwantung Army. Exhibit No. 835, trans-
20 cript page 8126.

21 The affiant confirms the facts established by
22 other evidence admitted by the Tribunal, and in particu-
23 lar:

24 1. Facts concerning the measures taken in
25 accordance with the Kan Tokuen and concerning the

1 operation plan of the war against the U.S.S.R. in 1942
2 and 1943. Exhibits 836 and 834. The testimony of the
3 witnesses MATSUMURA, Tomokatsu, and SEDJIMA, Rjudzo,
4 who were directly concerned with these plans, deal
5 with these questions. These exhibits are in the files
6 of the Tribunal. Both witnesses were cross-examined.

7 Besides the above-mentioned exhibits, exhibits
8 779, 832, 830, 799, 831, 639-A and 706 establish the
9 measures provided for by the Kan Tokuen.

10 2. The prosecution did not read other informa-
11 tion given in the affidavit of KITA because of its irrele-
12 vancy to the issues involved in our phase, or to the
13 issues of this case, or because of its having little
14 importance. It is necessary to take into consideration
15 also the fact that because of the objections on the part
16 of the defense the Tribunal has stricken out certain
17 parts of this affidavit. See record page 8135 and 8136.

18 Major General OTSUBO, Kadzumo. The affiant
19 confirms the facts established by other evidence admitted
20 by the Tribunal.

21 In particular:

22 1. Facts concerning operation plan for a war
23 against the U.S.S.R. in 1942-1943 and measures provided
24 for by the Kan Tokuen. Exhibits No. 836 and 834. Affi-
25 davits of General MATSUMURA, Tomokatsu, and Lieutenant

1 Colonel SEJIMA, Ryuzo, pertaining to these matters
2 were admitted by the Tribunal. Both witnesses were
3 cross-examined.

4 Besides, the measures provided for by the Kan-
5 tokuen were established by documentary evidence, that is
6 to say, by exhibits 779, 832, 830, 799, 831, 639-A,
7 and 706.

8 2. Concerning the operation plan of a war
9 in 1944-1945, the prosecution did not read the part
10 of the testimony of the witness pertaining to it.
11 This was done by the defense. Record pages 23,275 and
12 23,278.

13 3. Information concerning the last commander
14 of the Kwantung Army, General YAMADA, given by the
15 witness is irrelevant to the issues involved in this
16 case.

17 MATSUURA, Kusuo, cipher-clerk. Exhibit 833.
18 Record pages 8084, 8091, 8173 and 8174.

19 MATSUURA testifies:

20 1. On preparation of the troops for a war
21 vis-a-vis the U.S.S.R.

22 2. On the cessation of the demobilization
23 beginning from July 1941, and on the increase of the
24 numerical strength of the troops by newly mobilized
25 contingents.

1 3. That the officers of the Japanese army
2 discussed the preparation of Japan for a war vis-a-vis
3 the U.S.S.R.

4 4. On the preparedness to change the cipher
5 books in case of a war against the U.S.S.R.

6 Thus the testimony given by MATSUURA only
7 confirms the detail of the general preparation carried
8 out by the Japanese army in Mongolia and by the Kwantung
9 Army for a war against the U.S.S.R.

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1 The Tribunal admitted a great number of
2 documents proving this. Enumeration of these docu-
3 ments would take a lot of time and I shall refer only
4 to some of these documents:

5 Exhibit 836, the affidavit of the witness
6 MATSUMURA, Tomokatsu, who was examined before the
7 Tribunal (Record, page 8139).

8 Exhibit 834, the affidavit of the witness
9 SEJIMA, Ryuzo, who was examined before the Tribunal
10 (Record, page 8094).

11 Exhibit 740, the materials of the Second
12 Conference of the Kwantung Army Information Bureau of
13 June 1943 (Record, page 7667).

14 Exhibit 761, the record of the talk between
15 ITAGAKI, former Chief of Staff of the Kwantung Army,
16 with Ambassador ARITA of March 28, 1931 (Record, page
17 7830).

18 Exhibit 830, the telegram sent by Kretschmar
19 to Berlin concerning the calling up of great numbers
20 of reservists in Japan and concerning the replenishment
21 of the Kwantung Army units (Record, page 8071).

22 NOHARA, Komakichi, former press reviewer of
23 the Japanese Embassy in Berlin (Exhibit 811, Record,
24 page 7993). NOHARA testifies concerning the forwarding
25 by the Japanese Embassy in Berlin to the German Foreign

1 Ministry of secret information about the USSR armed
2 forces and economy. To prove the same facts the
3 prosecution introduced to the Tribunal the following
4 documents:

5 (1). Exhibit 798, a memorandum of Kramarets,
6 a German official, stating that HIGUCHI, assistant
7 Japanese attache in Berlin, reported that the Japanese
8 General Staff had entrusted him with telling that it
9 was ready to carry on the subversive activities
10 against the USSR in the Far East (Record, page 7665).

11 (2) Exhibit 836, the testimony of MATSUMURA,
12 Tomokatsu given in the Court to the effect that in
13 1941 he forwarded information about the USSR for the
14 military attache, Kretschmar (Record, page 8139).

15 (3) Exhibit 771, the expression of Ribben-
16 trop's gratitude for the forwarding to him of a tele-
17 graph report of the Japanese ambassador in Moscow
18 and of his wish to constantly receive information
19 about the USSR by this way (Record, page 7874).

20 I must say that we cannot be requested to
21 produce NOHARA because he left for Germany on his own
22 wish.

23 Taking into consideration your ruling, Mr.
24 President, about those witnesses who are not alive,
25 I am not going to speak about MIYAKE, Mitsuvara.

1 If I understood Mr. Blakeney correctly he
2 does not insist on the Russian witnesses being called
3 to attend for cross-examination. That is why I omit
4 this part of my statement as well.

5 The typical feature of our affidavits is
6 (as may be seen from the materials referred to) that
7 they are confirming. On the one hand they corroborate
8 each other, that is, the testimony of one witness is
9 confirmed by the testimony of the other witnesses of
10 the same group; on the other hand, they are confirmed
11 by the testimony of other witnesses not belonging to
12 this group and corroborated by other documents admitted
13 in evidence by the Tribunal.

14 Consequently there is no need to call those
15 witnesses. The only result will be unnecessary ex-
16 penses and, what is most important, waste of time. I
17 am not going to dwell upon the situation as it is at
18 present in respect of the time limit of the trial.
19 That has entered upon its second year. It is my
20 understanding that without being reminded of it the
21 Tribunal is fully aware of it all the time.

22 Up to the present day there has been examined
23 120 witnesses in the defense case. Among them there
24 were 27 witnesses who were examined in the Soviet
25 phase. Besides that the individual cases are forth-

1 coming and the speculations regarding the time they
2 will have to consume is little encouraging, to say
3 the least.

4 THE PRESIDENT: The length of the trial has
5 nothing to do with it. We must listen to all relevant
6 and material evidence that is not repetitive. If we
7 tell the defense we have heard enough we are telling
8 them, in effect, we are deciding their way.

9 GENERAL VASILIEV: That is quite correct,
10 your Honor, and I take this into consideration in
11 the first place.

12 The problem of not allowing any waste of
13 time has now become of utmost importance to the Tribunal.
14 On this occasion the refusal to call witnesses when
15 we have their affidavit will by no means affect the
16 fairness of the trial.

17 In producing the affidavits of 14 witnesses,
18 Japanese war prisoners, we have called as witnesses
19 three of them: General MATSUMURA, General KISABA
20 and Lieutenant Colonel SEJIMA. MATSUMURA and SEJIMA
21 were examined on October 18, 1946 in the open session
22 of the Court, and they confirmed their testimony.
23 KISABA committed suicide in Tokyo but his affidavit
24 was admitted by the Tribunal; consequently the Tribunal
25 didn't entertain any doubts as to the credibility of

1 his written testimony (Session of October 18, 1946;
2 page 8164 of the Record.)

3 In this way there are no grounds for dis-
4 trusting the affidavits of the other witnesses who
5 have not been called for cross-examination. The same
6 was true regarding the affidavit of TANABE, which was
7 received from the defense on May 29 without the wit-
8 ness being called for cross-examination; and in the
9 same manner the affidavit of General Deane produced
10 by the defense on June 4 was also admitted without
11 the deponent being called for cross-examination. A
12 number of other affidavits of witnesses were admitted
13 as well while deponents were not called for cross-
14 examination.

15 I submit that on these grounds the motion
16 of the defense should be rejected.
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THE PRESIDENT: Major Blakeney.

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RUSSIAN INTERPRETER: Excuse me, your Honor. Correction. Instead of the 4th of May it should have been the 4th of June.

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MR. BLAKENEY: A few points occur to me as requiring reply, by the Tribunal's leave. First of all, to clear away a few misconceptions, I must once again repeat that the witnesses TANABE and Deane were not produced for cross-examination just precisely because the prosecution did not request their attendance. In these instances the record is, despite all efforts to muddle it, perfectly clear. That is, the defense requested the issuance of subpoenas; the subpoenas were denied in favor of the right to take interrogatories; the interrogatories were taken and introduced, and the prosecution said, "We do not desire to request that the witness be brought for cross-examination." There is, therefore, no smallest part of an analogy between the two situations. Another misconception is that the Tribunal ever at any time has withdrawn or modified its long-standing order for the production of the witness TOMINAGA. These things are matters of record and should not have to be

1 continually referred to in the Tribunal except
2 for continual misstatements of the record.

3 Another misstatement of the record is
4 that the Tribunal adopted a new system which
5 entailed the recalling of all subpoenas thereto-
6 fore issued on behalf of the defense. I point
7 out that no such order in general terms was ever
8 made, and that the subpoenas once issued to
9 nations other than the USSR remain out-
10 standing and in full force and effect.

11 I must also say that if General
12 Vasiliev understood from any of my words that
13 we had abandoned our request for the witnesses
14 who are Soviet nationals his translation must
15 have been faulty, because in the argument just
16 submitted I specifically, and I think clearly,
17 renewed our request for the production of those
18 witnesses also. Counsel seems to suggest that
19 by reading to the Tribunal excerpts from these
20 affidavits the defense has in some way given
21 them the cachet of its approval. This, of course,
22 is not correct because at the time that I read
23 the first of these excerpts I specifically
24 stated that we relied on them only so long as
25 they remained in evidence against us. The

1 prosecution's position seems to be that the
2 testimony of these witnesses is of no importance
3 because other proof exists of the facts therein
4 alleged. This has a very familiar ring. It has
5 the sound of another of those disingenuous, al-
6 most disclaimers, such as we had experience with
7 last week. Had the prosecution only thought of
8 the idea in good season they could have refrained
9 from introducing these affidavits and could
10 thereby have felt quite safe against the threat
11 of having the full truth disclosed by cross-
12 examination. But they did not do so. They
13 put the affidavits into evidence to be acted upon
14 by the Tribunal, to be accorded by the Tribunal
15 we know not what weight in the ultimate conclusion,
16 and our position, therefore, is that we are en-
17 titled to make the attempt, of the success of
18 which we have no doubt, to destroy by cross-
19 examination this carefully tailored testimony.

20 I am glad that General Vasiliev men-
21 tioned the witnesses MATSUMURA and SEJIMA, who
22 came to testify in person, and I will merely
23 refer the Tribunal to the cross-examination of
24 those witnesses as demonstrations of how their
25 most vicious charges melted away under cross-

1 examination.

2 So the fundamental position is this:
3 The prosecution feels this evidence is not worth
4 anything, these witnesses are not worth cross-
5 examining. But we feel that it is, and that they
6 are worth cross-examining so long as their evidence
7 stands against these defendants. whose lives are
8 at stake, this being I suppose the very insig-
9 nificant result spoken of by Mr. Prosecutor. No
10 doubt, as he says, this is the most expedient
11 method. Perhaps, as he says, it would take too
12 much time to bring the witnesses. But I suggest
13 that his very fear of what cross-examination will
14 do to his case is the reason that he now comes
15 and says the result would be very insignificant.

16 THE PRESIDENT: The Court will consider
17 its decision, and will adjourn now until half-
18 past one.

19 (Whereupon, at 1155, a recess
20 was taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess,
at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I should like at this time
to recall the witness YANO for re-examination.

- - - -

M I T S U J I Y A N O, recalled as a witness on
behalf of the defense, resumed the stand
and testified through Japanese interpreters
as follows:

THE PRESIDENT: You are still on your
former oath.

MR. BLAKENEY: Please let the witness be
handed exhibit 2710.

(Whereupon, a map was handed to
the witness.)

REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q Mr. Witness, I ask you to look at that
map and state whether it is one of the maps heretofore
shown to the prosecution which shows the border

YANO

REDIRECT

1 between Manchuria and Mongolia to be east of the
2 Halha River.

3 A On the face of the map the border appears
4 east of the Halha River, but according to the
5 Japanese inscriptions written on this map, the
6 border lies on the Halha River.

7 Q Please read that part of the explanation
8 in question.

9 A Originally and heretofore, the border between
10 Outer Mongolia and Manchuria starts at a point of
11 intersection of the Great Wall and a place called
12 Chosaku and proceeds northeastward from Chosaku. I
13 shall omit such passages as are irrelevant. It
14 crosses over the Hsingan Mountains and proceeds
15 to Khalkhin-Gol and severs Boire Noir.

16 THE PRESIDENT: He had better read the
17 lot. We are not going to make him the judge of what
18 was relevant or not.

19 A (Continuing) Beginning at the beginning
20 again: Originally and ordinarily, the border between
21 Mongolia and Manchuria starts at the intersection
22 of the Great Wall and the point called Chosaku
23 and from Chosaku proceeds northeastward through to
24 Kalgan and then descends to Ko, and then turns
25 northward, southwest of Khalkhin-Gol -- Harbin. And

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1 on land the borderline is marked by artificially
2 made monuments and then proceeds northward --
3 northwestward nearby the former Chinese Eastern
4 Railway; and then reaches the Yalie River and then
5 proceeds westward along the river; and then passes
6 through the dividing range between the Yalie and
7 Shelo Rivers to Hsinanling and then cuts the Boire
8 Noir after passing parallel with the Khalkhin-Gol
9 and then suddenly turns northward and proceeds to
10 the boundary of China and Russia. As I have read,
11 the Japanese explanation on this map indicates
12 that the borderline runs on the Khalkhin-Gol River --
13 along the Khalkhin-Gol River.

14 MR. BLAKENEY: I wish to submit to the Board
15 of Language Arbiters whether Harahen Goro Ni Sote
16 means "running parallel with the river."

17 THE PRESIDENT: Do so. That question
18 sharply arises.

19 MR. BLAKENEY: I ask for their report.

20 THE PRESIDENT: Can you continue with
21 something else, Major Blakeney?

22 MR. BLAKENEY: Yes, sir.

23 THE LANGUAGE ARBITER (Major Moore): Mr.
24 President.

25 THE PRESIDENT: Major Moore.

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1 THE LANGUAGE ARBITER (Major Moore): The
2 words given to us should be translated "along the
3 Khalkhin-Gol River."
4

5 THE PRESIDENT: Look at the inscription
6 on the map itself, Major.

7 THE LANGUAGE ARBITER (Major Moore): Does
8 the President wish the translation of the inscription,
9 sir, or just to test those particular words?
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1 MR. BLAKENEY: I will continue to another
2 matter.

3 Q I want to ask you, Mr. Witness, about exhibit
4 719, a detailed administrative map of Outer Mongolia,
5 presented to you on Friday last by the prosecution.
6 That is exhibit 719-A.

7 (Thereupon, a map was handed to the
8 witness.)

9 Please look at the map, exhibit 719-A,
10 which was forwarded from the Chief of Staff of the
11 Kwantung Army to the Vice-Minister of War by letter
12 of the 29th of January, 1938. Can you state from
13 inspection of that map whether it comes from Japanese
14 or Russian sources originally?

15 MR. BLAKENEY: I am sorry. The map is 719-B,
16 I have been told.

17 A I can.

18 Q Please tell the Tribunal.

19 A The original of this map, according to this
20 map, was made in 1934 by a Dishkov, and where it says
21 that it was made by the staff of the Kwantung Army
22 the year is 1937, or three years afterwards. It is
23 obvious from the difference of three years that it
24 took the Kwantung Army three years to reproduce this
25 map.

YANO

REDIRECT

1 Q Does the Japanese Army customarily inscribe
2 on its maps the name of the compiler?

3 A I have never heard of that up to this time.

4 Q Looking in the same book or collection of
5 documents which has been marked for identification
6 exhibit 719, please find the outline map of the Soviet
7 Far East delivered by the Chief of Staff of the Kwan-
8 tung Army to the Vice-Minister of War on the 25th of
9 January, 1938.

10 (Whereupon a collection of documents
11 was handed to the witness.)

12 Please find that, Mr. Witness.

13 A (The witness manipulated papers.)

14 Q Have you found it?

15 A I have.

16 Q What does the covering letter of the 25th
17 of January, 1938, say about the purpose of forwarding
18 this map?

19 A That an outline map was being tendered or
20 submitted -- that a rough map was being submitted.

21 Q Is the purpose of submission stated in that
22 letter?

23 A The purpose is not set forth in this note.

24 Q Who prepared that map, according to the
25

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REDIRECT

1 printing thereon?

2 THE PRESIDENT: Colonel Smirnov.

3 COLONEL SMIRNOV: Your Honor, in the volume
4 of correspondence of the Kwantung Army with the War
5 Ministry there are approximately 1,500 pages. I don't
6 see any reason to read all the covering letters that
7 may be found in that volume of correspondence.

8 THE PRESIDENT: Certainly we hope to avoid
9 that. Will this lead to such a result?

10 MR. BLAKENEY: I don't think so.

11 COLONEL SMIRNOV: In that volume may be found
12 quite a series of maps, and if the defense are going
13 to present a map they must explain for what reason
14 they are doing so, and the only practical result may
15 be a waste of time, nothing else.

16 THE PRESIDENT: Do you submit, Colonel, that
17 this is not re-examination in the true sense?

18 COLONEL SMIRNOV: Yes, your Honor, that is
19 exactly what I mean.

20 THE PRESIDENT: Well, for the time being I
21 cannot say I agree with you, but you may prove to be
22 right.

23 You had better proceed, Major Blakeney.

24 BY MR. BLAKENEY (Continued):

25 Q I had asked you what the map shows about

YANO

REDIRECT

1 who prepared it. Never mind the address.

2 A The printer, the South Manchurian Railway
3 Company; the owner of the copyright and publication
4 right. City of Dairen, Fumi Yamagatsuro.

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1 Q What is the date of the map according to the
2 imprint on it?

3 A The 15th of November 1937.

4 Q Where does it show the borderline between
5 Manchuria and Outer Mongolia?

6 A Clearly on the Halha River line.

7 MR. BLAKENEY: I offer in evidence the map
8 and the covering letter, they being contained in exhibit
9 for identification No. 719.

10 THE PRESIDENT: Colonel Smirnov.

11 COLONEL SMIRNOV: Your Honor, I object to the
12 introduction of this map in evidence. Your Honor, the
13 substance of the contention of the prosecution was
14 exactly that, that after 1935 the Japanese maps of that
15 area were falsified. Your Honor, we have tried to
16 show this by presenting a series of maps -- a series
17 of official Japanese maps of the Kwantung Territory
18 Government. On the official maps of 1911, 1926 and
19 1934 the boundary line was shown as passing east of the
20 Halha River, but on the map of 1935 the boundary line
21 was arbitrarily transferred on the Halha River. We
22 have presented that map of 1935 and presented a map
23 of 1939 taken from the Tokyo Gazette. In such condition
24 the map of the Southern Manchuria Railway, which is not
25 an official Japanese map, is just repetitious evidence.

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1 It is possible to present hundreds of such maps which
2 will have no probative value, but the basic official
3 maps have already been submitted to the Court.

4 THE RUSSIAN INTERPRETER: Correction to the
5 previous statement. The sentence should have read as
6 follows: the maps prepared by the Southern Manchurian
7 railway.

8 THE PRESIDENT: Major Blakeney.

9 MR. BLAKENEY: The position of the defense
10 has been that this borderline was indefinite. The
11 prosecution has shown that there passed through the
12 hands of certain Japanese military officials, material
13 indicating that the borderline was in accordance with
14 the Russian contention. I am offering evidence that
15 four days earlier material had passed through their
16 hands and was treated equally showing that the border-
17 line was in accordance with the Japanese contentions.
18 The Colonel, in cross-examining this witness, argued
19 that defendants TOJO and UMEZU knew that the borderline
20 lay according to the Russian contention because of this
21 correspondence, but I submit the correspondence, viewed
22 as a whole, shows only that they knew there were various
23 contentions and that material supporting any or all
24 of those contentions was equally collected, forwarded
25 and filed. I, therefore, submit that this map is

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admissible.

1 THE PRESIDENT: Is it your submission that
2 the Kwantung Government used both kinds of map
3 indifferently but on the map showing the boundary
4 east of the river they put a legend to the effect that
5 the boundary was actually along the river?
6

7 MR. BLAKENLY: No, sir, my position is a
8 little different from that. Our position is that neither
9 the Kwantung Bureau or the Kwantung Government General,
10 the two agencies which prepared those two maps had
11 any authority in the matter of boundaries or indeed
12 of Manchuria at all. The map handed to the witness,
13 from which he read the explanation, was not one of those
14 two maps in question, that is, not one of the maps
15 prepared by the Kwantung Bureau or the Kwantung Govern-
16 ment General, but is a map from quite a different
17 source, as I recollect. No, it is another Kwantung
18 Bureau map, it is not one of the two under comparison.
19 It is still a different bureau, I think. This is a
20 bureau which existed much earlier and did not exist
21 at the time the two maps, that were offered for offered
22 for comparison, were made.

23 Evidence already in the case introduced by
24 the prosecution shows that they, the Kwantung Bureau,
25 etc., had no authority outside of the Kwantung leased

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1 territory and the railway zone, therefore, had no
2 concern with borders of Manchuria -- knew nothing
3 about them.
4

5 THE PRESIDENT: I do not think any of us are
6 clear yet as to what the contentions are. I am trying
7 to find out what are the limitations of re-examination -
8 what the purpose of this re-examination is.
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1 MR. BLAKENEY: I will state it more clearly
2 if possible. I will try. It has been suggested that
3 because a map was sent from TOJO to UMEZU showing the
4 boundary to be according to the Russian contention
5 that those two had guilty knowledge.
6

7 THE PRESIDENT: If TOJO sent two maps showing
8 boundaries in different positions but one of the maps
9 showing in a legend the boundary along the river, this
10 would be clearly admissible in my opinion and the origin
11 of the maps would be beside the question, whether they
12 were in the Kwantung Government files or any where else.
13 It would be something that those two accused adopted.
14 But is the matter as simple as that? I thought it was.

15 MR. BLAKENEY: No, sir. The simple truth is
16 that these military organizations were collecting all
17 sorts of materials. They did not adopt any of them of
18 necessity.

19 THE PRESIDENT: Was this map with the legend
20 showing the boundary along the river sent by the one to
21 the other?

22 MR. BLAKENEY: No, sir. That is a different
23 question which I had passed on from.

24 THE PRESIDENT: Were maps showing both locations
25 sent by the one to the other?

MR. BLAKENEY: Yes, they were. One has been

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1 introduced. The other is now the one being tendered.

2 THE PRESIDENT: The Court overrules the objec-
3 tion and admits the map.

4 CLERK OF THE COURT: The map under discussion,
5 being excerpt from exhibit 719 for identification only,
6 will be marked exhibit 719-E.

7 (Whereupon, the map above referred
8 to was marked defense exhibit No. 719-E and
9 received in evidence.)

10 COLONEL SMIRNOV: Your Honor, if the map is
11 produced in evidence we would like that the ordinary
12 rules of the Tribunal be adhered to, that we would be
13 able to have a copy of the covering letter and of the
14 map, or at least a copy of the part of the map.

15 MR. BLAKENEY: Naturally we will comply as
16 soon as we are able.

17 COLONEL SMIRNOV: For two weeks we have been
18 waiting for a copy of the map which the defense presented
19 to the Court as a map which was allegedly attached to
20 the Molotov-TOGO Agreement.

21 MR. BLAKENEY: The map has not been yet with-
22 drawn for photographing for the reason that it was in
23 almost daily use for cross-examination.

24 COLONEL SMIRNOV: But there are definite rules
25 of the presentation of evidence which must be adhered

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1 to by the defense.

2 THE PRESIDENT: At least some of the Members
3 of the Tribunal do not subscribe to the view that docu-
4 ments tendered in cross-examination are subject to the
5 rules before tender.

6 BY MR. BLAKENEY (Continued):

7 Q Mr. Witness, I have handed you a set of maps.
8 Please look at those and state in what language they
9 are printed.

10 A In Russian.

11 MR. BLAKENEY: May the Russian interpreter
12 come down and read to us the date and place of publica-
13 tion of these maps?

14 Now, the title of the set is what?

15 THE RUSSIAN INTERPRETER: A Map of the Eastern
16 part of the U.S.S.R. with adjoining Countries, issued
17 and published by the Topographic Department in 1884,
18 corrected in 1932. Scale, 1 to 4,200,000.

19 MR. BLAKENEY: Now please look at Sheet No. 7
20 of this set and state whether it is of the same date
21 and the same publisher.

22 I understand the date is not given but is there
23 some date there about -- is there some date of the latest
24 information applied to the map, Mr. Interpreter?

25 THE RUSSIAN INTERPRETER: Yes, that is correct.

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1 MR. BLAKENEY: What is that latest date?

2 THE RUSSIAN INTERPRETER: The latest date is
3 1933.

4 MR. BLAKENEY: Thank you.

5 BY MR. BLAKENEY (Continued):

6 Q Mr. Witness, please look at that sheet No. 7
7 and state where it shows the boundary to be in the
8 Khalkhin-Gol region between Manchuria and Outer Mongolia.

9 A The boundary line clearly is indicated on the
10 Khalkhin-Gol River.

11 MR. BLAKENEY: I offer the map in evidence.

12 THE PRESIDENT: Admitted on the usual terms.

13 Q Now, Mr. Witness, I hand you another map and
14 ask you what language that is written in.

15 CLERK OF THE COURT: The map that I now have
16 will receive exhibit No. 2713.

17 (Whereupon, the map above referred
18 to was marked defense exhibit No. 2713 and
19 received in evidence.)

20 Q Now, Mr. Witness, I hand you another map and
21 ask you in what language that is written.

22 A This map also is in Russian.

23 MR. BLAKENEY: I ask the Russian interpreter
24 to look at the map and state to the Tribunal the date
25 and place of publication thereof.

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1 THE RUSSIAN INTERPRETER: The Department of
2 Military Topographers of the Workers and Peasants Red
3 Army. The map was changed in 1935 on the materials on
4 the eastern part of the U.S.S.R. and Manchuria relating
5 to the years of 1933 and 1935.

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1 THE PRESIDENT: I understand that this Russian
2 interpreter is not employed by the Tribunal, so I desire
3 to express to him our thanks for coming to our assistance.

4 Q Mr. Witness,, please look at that map and
5 state to the Tribunal where it shows the boundary in
6 the Khalkhin-Gol district to be between Manchuria and
7 Outer Mongolia.

8 THE PRESIDENT: A Member of the Tribunal would
9 like to know where you got these maps and what is the
10 origin of the certificate.

11 MR. BLAKENEY: There is no certificate provided
12 as yet, because the maps appear on their face to have
13 been published by the armed forces of a government. But
14 I can and gladly will, if desired, provide a certifi-
15 cate that they came from the archives of the Foreign
16 Ministry.

17 THE PRESIDENT: The Japanese Foreign Ministry?

18 MR. BLAKENEY: That is correct.

19 THE PRESIDENT: Colonel Smirnov.

20 COLONEL SMIRNOV: It seems to me, your Honor,
21 that all this episode about the maps is outside the
22 scope of the redirect examination and exceeds the
23 possibilities of presenting new evidentiary material.
24 As far as this document is concerned, it seems to me
25 that the defense should have complied with the rules of

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1 this Tribunal as to the presentation of documents.

2 MR. BLAKENEY: I submit that this is clearly
3 within the scope of re-examination.

4 COLONEL SMIRNOV: Moreover, this is a map of
5 the Soviet Union but not a map of Manchuria or
6 Mongolia. Moreover, a casual look at this map raises
7 a number of questions which gives a right to doubt the
8 origin of this map, that this map comes from Soviet
9 sources, and to question its authenticity. First of all,
10 it is absolutely impossible to establish the year of
11 the publication of that map. This map was either
12 published in 1884 or corrected in 1919 or changed in
13 1935.

14 THE PRESIDENT: Will you cease addressing the
15 Court while I listen to the secretary of the Russian
16 Judge?

17 Colonel Smirnov, you should certainly have the
18 opportunity to cross-examine on the last exhibit ten-
19 dered and accepted. To that extent, your objection
20 is upheld.

21 MR. BLAKENEY: The witness was about to
22 answer where the boundary line lies on the map which
23 he is presently holding.

24 THE WITNESS: According to this map, the
25 frontier between Outer Mongolia and Manchukuo starts

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1 at Halhasumi and proceeds along the Halha-myo and the
2 Halha River northward with the river, on the north side
3 of the river and reaches Haudagaya, from which it
4 proceeds westward for thirty kilometers until it comes
5 together with the Khalkhin-Gol River.

6 Q Well, that is to say, then, that the boundary
7 lies east of the river in the area which we have been
8 discussing?

9 A Yes.

10 MR. BLAKENEY: The map is offered in evidence.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: The map which has just
13 been handed to me will receive exhibit No. 2714.

14 (Whereupon, the map above referred
15 to was marked defense exhibit No. 2714 and
16 received in evidence.)

17 Q Now I ask you, Mr. Witness, whether in com-
18 paring those two maps, you can draw the conclusion that
19 the Soviet military authorities arbitrarily changed
20 the border within the two years 1933 to 1935?

21 THE PRESIDENT: The question is clearly one
22 for the Tribunal.

23 MR. TAVENNER: And I object, your Honor, on
24 the basis that your Honor has in mind.

25 THE PRESIDENT: Objection upheld.

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1 Have you another map to show him, Major?

2 MR. BLAKENEY: Yes, sir, I have quite a number
3 more.

4 THE PRESIDENT: We will recess for fifteen
5 minutes.

6 (Whereupon, at 1445, a recess was
7 taken until 1500, after which the proceed-
8 ings were resumed as follows:) Honorable
9 Justice Bernard, Member from the Republic
10 of France, not sitting:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 BY MR. BLAKENEY (Continued):

5 Q I hand you another map, Mr. Witness, and
6 ask you to state where and by whom it was published.

7 (Whereupon, a document was handed
8 to the witness.)

9 A Published on November 25, 1932, by the Japan
10 Imperial Geodetic Survey Department.

11 Q Map of what and what scale?

12 A Scale, 1 to 1,500,000.

13 Q What area?

14 A The area is southwest of Hailar in the Buir-
15 Nor area, actually surveyed.

16 Q Where does it show the boundary of the
17 Khalkhin-Gol area between Manchuria and Outer Mongolia?

18 MR. BLAKENEY: I suggest that only one
19 counsel should be heard.

20 THE PRESIDENT: I do not know what he is
21 going to say. It may not be an objection.

22 MR. TAVENNER: It is true, your Honor. I
23 was rising to make an objection.

24 THE PRESIDENT: Then, the Russian prosecutor
25 should make it.

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Colonel Smirnov.

1 COLONEL SMIRNOV: Your Honor, it is a
2 question of the presentation of a number of new maps.
3 This witness cannot identify these documents. These
4 documents have not been submitted in evidence. And,
5 so far as these documents are concerned, the rules of
6 the Tribunal must be adhered to, the rules which apply
7 to the presentation of new documents. Therefore, we
8 object to the introduction of these documents in the
9 course of the examination of the witness now in the
10 stand.
11

12 If Mr. Blakeney intended to present these
13 documents in the course of the examination of the
14 present witness, he should have done that before.
15 In this way, the rules of the Tribunal as to the
16 presentation of evidence have been grossly violated,
17 and this is prejudicial to the rights of the prose-
18 cution. When we had to present the evidence in the
19 course of the examination of the present witness, we
20 presented the maps and the copies thereof, and in
21 that way we directly adhered to the rules of the
22 Court pertaining to the introduction of new docu-
23 ments.

24 THE PRESIDENT: When a document is handed
25 to the witness in the course of cross-examination,

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1 and then tendered, it hasn't to be processed and
2 served in advance; nor have documents tendered in
3 reply in the course of what is really reexamination.

4 It now appears that this witness is being
5 handed documents for which he does not vouch and which
6 we ought to be able to read as well as he does subject
7 to any translations. If I am right, that is new matter
8 in the true sense, and the rule should apply before
9 the tender of the documents.

10 What have you to say, Major Blakeney?

11 MR. BLAKENEY: I submit that your Honor is
12 not right for this reason: This witness testified
13 in chief to personal investigations in Mongolia and
14 identified books. On cross-examination he was con-
15 verted into an expert on maps, being shown and asked
16 to explain and compare numerous maps, both official
17 and unofficial, some of which were in evidence, some
18 of which were not, but which latter were admitted into
19 evidence on his identification. In the course of that
20 cross-examination, he was asked to draw conclusions,
21 such as one in the form of a question of mine that
22 was objected to, and he did draw those conclusions as
23 well as others.

24 I am now putting to him maps, not asking him
25 to read them beyond identifying them and stating what

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1 they show, which, of course, the Tribunal can see
2 pretty well and which, it is true, might equally
3 well be put in by certificate of the official cus-
4 todian thereof. The prosecution saw fit, however,
5 in cross-examination to make this witness an expert
6 on the alleged moving of the frontier, moving of the
7 frontier as marked on maps, I mean, of course. The
8 evidence now being adduced shows that, if the frontier
9 was moved, it was not moved on official Japanese
10 publications but was on official Soviet publications.
11 Thus, I submit, arising directly out of cross-
12 examination.

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1 THE PRESIDENT: I am talking about the maps
2 themselves. Ordinarily, they would be produced by
3 the person vouching for their accuracy or who dis-
4 covered them. They could be produced under certifi-
5 cate as to their source by somebody knowing it.

6 This witness is neither the author nor the
7 discoverer of the maps, nor is his testimony required
8 to read them; and by this course, which is not essen-
9 tial, you avoid the application of our rules as to
10 processing and service.

11 MR. BLAKENEY: Such, of course, was not my
12 intention because I had assumed that I was compelled
13 to process the map and serve it as soon as practicable
14 after introducing it, and I had further assumed that
15 a certificate that the document was found in someone's
16 archives added nothing to its official character which
17 is apparent on its face.

18 THE PRESIDENT: Even if we accept the certifi-
19 cate on its face, we still should observe the rule as
20 to processing and service. That is what I am emphasiz-
21 ing. I do not blame you for trying to get it in. I
22 do not think there is anything improper about the
23 attempt. However, now that the objection is taken,
24 we have to deal with it. It does seem to be covered
25 by the rules. Some of us, I suppose, would be pleased

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23 attempt. However, now that the objection is taken,
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25 by the rules. Some of us, I suppose, would be pleased

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1 to see the objection waived and the prosecution sat-
2 isfied with further cross-examination, but we have
3 to decide on the rules.

4 MR. BLAKENEY: I should like to point out
5 that we have not yet been served with the full map
6 which was introduced in the cross-examination of this
7 witness and which led to this reexamination. How-
8 ever, I do not wish to seem to be in the position
9 of attempting to evade the rules. Therefore, I will
10 withdraw -- I do not believe it was tendered --
11 therefore, I will give up the attempt to introduce
12 the additional maps to this witness and will request
13 leave to introduce them under a certificate at a
14 later time.

15 With that I conclude me reexamination.

16 Is there further cross?

17 THE PRESIDENT: Colonel Smirnov.

18 COLONEL SMIRNOV: Your Honor, I would like
19 to familiarize myself with the documents which have
20 just been presented. As far as one of the maps on
21 which the date of publication is not given, we have
22 great doubts as to its authenticity. But, before
23 making some definite assertions to that effect, we
24 would like to study the documents further. Your
25 Honor, that is all that I want to say.

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1 THE PRESIDENT: You should have an oppor-
2 tunity to examine the document carefully before being
3 required to further cross-examine.

4 The witness will stand down to be recalled
5 for cross-examination tomorrow.

6 Have the Language Section anything to
7 intimate to us?

8 Major Moore.

9 LANGUAGE ARBITER (Major Moore): Mr. Presi-
10 dent, the words should be translated "proceeds along
11 the Khalkin-Gol." References to the record will be
12 made tomorrow.

13 THE PRESIDENT: The witness is at liberty
14 until half-past nine tomorrow morning.

15 (Whereupon, the witness was ex-
16 cused.)

17 - - -

18 MR. BLAKENEY: Mr. Furness will continue.

19 THE PRESIDENT: Major Furness.

20 MR. FURNESS: If the Court pleases, before
21 tending to the matter relating to the Chang Kufeng
22 Incident, I wish to mention one matter regarding the
23 Anti-Comintern Pact involving the individual client
24 whom I represent.

25 In his argument against our motion to dis-

1 miss, Mr. Comyns Carr, Associate Prosecutor for the
2 United Kingdom, said on 30 January 1947 (see pages
3 16,895 and 16,896 of the record), "While still
4 Ambassador to the USSR, 2 January 1938, he was
5 awarded for services in concluding the Anti-Comin-
6 tern Pact." (See exhibit 983)

7 I have checked exhibit 983 and find that it
8 is a protest by Ambassador Grew to the Japanese
9 Foreign Minister ARITA, dated October 31, 1938, re-
10 garding an alleged bombing of a Lutheran Brethren
11 Mission in China by Japanese airplanes which, of
12 course, has nothing to do with either the Anti-
13 Comintern Pact nor the defendant SHIGEMITSU. I made
14 a further check to find any other exhibit or other
15 evidence regarding this and found none. I cannot
16 say I expected to find any since I have been advised
17 that the defendant SHIGEMITSU had nothing to do with
18 the closing of the Anti-Comintern Pact and was never
19 awarded for any services in connection with it. I,
20 therefore, request that this statement in counsel's
21 argument be stricken or that it be ignored by the
22 Tribunal.

23 THE PRESIDENT: Mr. Comyns Carr.

24 MR. COMYNS CARR: Your Honor, at the moment
25 I know nothing about this matter, but I will inves-

1 tigate it and inform the Tribunal.

2 MR. FURNESS: I think I should say, your
3 Honor, that I talked with Mr. Comyns Carr about this
4 before and that I told him that I would bring it up
5 when I introduced further evidence. I do not like
6 to have it appear that I have brought it up by sur-
7 prise in any way.

8 MR. COMYNS CARR: My friend did mention to
9 me that he was going to bring up some matter relating
10 to SHIGEMITSU, but I did not understand what it was
11 until I heard it just now. Therefore, I have not
12 made the investigation.

13 MR. FURNESS: I thought I had made myself
14 clear and am rather surprised to find that I did
15 not.

16 In order that I may be able to release the
17 witness, I call now as a witness General UGAKI whose
18 evidence is incorporated in defense document 1685.

19 General UGAKI has testified before in this
20 Tribunal in the presentation of the prosecution's
21 case. General UGAKI was Foreign Minister of Japan
22 during the Chang Kufeng Incident.

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1 K A Z U S H I G E U G A K I, previously called as
2 a witness on behalf of the prosecution and duly
3 sworn, was called as a witness on behalf of
4 the defense and testified through Japanese
5 interpreters as follows:

6 MR. FURNESS: I ask that the witness be
7 shown defense document 1685.

8 (Whereupon, a document was handed
9 to the witness.)

DIRECT EXAMINATION

10
11 BY MR. FURNESS:

12 Q Your name is Kazushige UGAKI and you are
13 seventy-nine years of age, is that correct?

14 A Yes.

15 Q You reside at Nagaoka, Shizuoka Prefecture,
16 Japan?

17 A Yes.

18 Q Will you be good enough to look at defense
19 document 1685 and tell us whether it is your affi-
20 davit.

21 A It is my affidavit.

22 Q Did you sign and swear to it?

23 A Yes.

24 Q Are the facts stated therein true and cor-
25 rect?

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1 A Yes, true and correct.

2 MR. FURNESS: I offer in evidence defense
3 document No. 1685.

4 THE PRESIDENT: Mr. Comyns Carr.
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1 . OO-YME CAMR. May it please the
2 Tribunal, this document contains frequent refer-
3 ences to telegrams not produced, passing between
4 himself as Foreign Minister and the accused
5 SHIGEMITSU as Ambassador in Moscow. In the last
6 paragraph the witness says that he has not got
7 them, and that they are or were in the Foreign
8 Office. So far as I am aware no attempt has
9 been made to account for the question whether
10 they are now there or not. Since the affidavit
11 was served we have made some inquiries on that
12 subject, ourselves, but so far the Foreign
13 Office has not been able to **tell us** whether they
14 have got them or not. It happens to be particu-
15 larly important on this occasion because I have
16 some information as to their contents, but
17 naturally it would be better that they should
18 be produced.

19 THE PRESIDENT: Major Furness.

20 MR. FURNESS: If the Tribunal please,
21 if the prosecutor does not know of our attempts
22 to account for these documents he has not read
23 the record of the testimony of the witnesses
24 ASAMI and HAYASHI. The witness ASAMI testified
25 that the Foreign Office was almost totally

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1 destroyed, and particularly the office dealing with
2 matters between Soviet Russia and Japan was de-
3 stroyed. That it was the custom of that office to
4 retain all copies of telegrams and messages, copies,
5 originals, drafts, and other evidences. The witness
6 HAYASHI testified that search had been made for all
7 documents relating to the Changkufeng Incident, and
8 he had been unable to find them, and that he was
9 custodian of the records.

10 We have been allowed by the Tribunal, over
11 protest of the prosecution, to read excerpts from
12 Foreign Office reports referring to telegrams and
13 have been allowed to introduce testimony in the
14 Nomonhan Incident also based on this testimony of
15 the witness ASAMI and the witness HAYASHI. I should
16 include as well the witness MATSUDARA, who testified
17 to the burning of documents on the coming of war at
18 the Japanese Embassy in Moscow.

19 THE PRESIDENT: Some of the maps used today
20 bearing on Soviet-Japanese matters were received
21 from the Foreign Office. How do they come to
22 escape?

23 MR. FURNESS: If your Honor please, the
24 witness HAYASHI or ASAMI -- I am not sure which --
25 said that in referring to documents he did not

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1 include printed matter. I think that printed
2 maps to which your Honor has just referred would
3 be included and since they had been published
4 would not be destroyed.

5 MR. COMYNS CARR: Your Honor, I have not
6 only read the testimony in question, but I have
7 also read the cross-examination of HAYASHI, on
8 which his testimony appeared so unsatisfactory that
9 he was ordered by the Tribunal to go and make
10 further investigation and report again, which he
11 has never done. The prosecution has introduced I
12 should think scores -- certainly a very large
13 number -- of original telegrams obtained from the
14 Foreign Office.

15 MR. FURNESS: Witness HAYASHI is waiting
16 to be recalled by the prosecution. Any statement
17 that he has not yet seen fit to be recalled by
18 me is not true. The prosecution asks that he go
19 back and get further records. He has done so. We
20 are waiting. I have seen no telegrams introduced
21 of any kind regarding this particular incident or
22 any of the border incidents between Russia and
23 Japan.

24 THE PRESIDENT: And we want to know why.
25 We find it hard to believe that the printed matter

1 was kept separately from the other matter. Why
2 would that be? The TOGO-UIEZU correspondence
3 included printed matter, but I realize that was
4 not from the Foreign Office.

5 MR. FURNESS: I think, your Honor, the
6 printed matter was -- more copies were printed
7 and more copies distributed to different officials
8 in the Foreign Office, and therefore it is avail-
9 able. These telegrams, copies, drafts, originals,
10 were **kept**, the witnesses testified, in the Euro-
11 Asiatic Bureau, which was destroyed. We have
12 accounted for them so far as we are able, and I
13 submit that this evidence should be received as
14 the evidence was received in the past. The Court
15 can then decide, individual Members, whether we
16 have accounted for it sufficiently.

17 THE PRESIDENT: Major Furness, how do
18 you meet this observation by a Member of the
19 Tribunal? If the evidence of these two witnesses
20 covered these particular telegrams, the answer of
21 the Foreign Office to the inquiry of the prosecu-
22 tion for these documents should have been, "They
23 were burned." Instead, the answer was, "We don't
24 know whether we have them or not."

25 MR. FURNESS: To which telegrams does

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the Member refer?

1 MR. COMYNS CARR: Your Honor, I didn't
2 intend to say, if I conveyed the impression, that
3 we had had that answer from the Foreign Office.
4 We haven't had an answer at all. It may be that
5 when we get it it may be they were burned, or
6 they may produce them for all we know. But we
7 have had from the Foreign Office, and put in
8 evidence, innumerable original telegrams relat-
9 ing to the Manchurian Incident and the Pacific
10 War and other matters. I can't say whether any
11 of them related to the Russian Border Incident
12 but certainly relate to the Manchurian and China
13 Incidents and to the Pacific War, events lead-
14 ing up to the Pacific War.
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1 MR. FURNESS: If your Honor please, just
2 at present we are dealing with the border incidents,
3 not the Pacific War and not the Manchurian Incidents.
4 We had one witness who testified that the Foreign
5 Office burned down, particularly the office which
6 retained this type of document. We had another
7 witness, a second witness, the present custodian,
8 who testified that he had made a search for these
9 documents and that he had been unable to find them.
10 He testified that the records of his office showed
11 that they had been burned. Since he was only the
12 present custodian -- he was not the custodian at
13 the time of the fires -- I don't see how he could
14 have made any other answer.

15 I submit that we have accounted for the
16 nonproduction of these documents so far as we are
17 able to do so and I submit that it is enough. I
18 call attention to the fact that in this particular
19 affidavit there is very little about the contents
20 of those documents.

21 THE PRESIDENT: If we let this affidavit in,
22 it does not follow we believe the evidence about
23 what happened to the documents -- the originals.
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1 MR. FURNESS: With regard to the witness
2 HAYASHI, I assume that the prosecution is going to
3 notify me when he is going to be recalled. They
4 told me that they would notify me at the time of
5 conferences with him. As far as I know he is not
6 avoiding any answering of questions which they are
7 asking him; at least I requested them to notify me
8 if they had any complaints. They have not done so.
9 I have not heard that he has refused to produce any
10 records, which was all that he was asked to do.

11 THE PRESIDENT: We have been receiving
12 certificates accounting for these documents. Maybe
13 your case will be improved, I do not know, if you
14 produce such a certificate accounting for these
15 particular documents. This is a very important
16 matter.

17 MR. FURNESS: If the Court please, instead
18 of producing a certificate we produced a witness who
19 testified and we subjected him to cross-examination.

20 THE PRESIDENT: That is a general blanket
21 assertion. Perhaps it covers it.

22 MR. FURNESS: I call attention to the fact
23 that the witness HAYASHI, who makes these certificates,
24 testified that he had made a search for all documents,
25 all telegrams, et cetera, messages, letters,

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1 communications, originals, copies, drafts, relating
2 to the Changkufeng Incident and had been unable to
3 find them.

4 THE PRESIDENT: By a majority the Court
5 overrules the objection and admits the document.

6 CLERK OF THE COURT: Defense document 1685
7 will receive exhibit No. 2715.

8 (Whereupon, the document above
9 referred to was marked defense exhibit No.
10 2715 and received in evidence.)

11 MR. FURNESS: I will read exhibit 2715,
12 omitting the formal parts:

13 "I am a retired General in the Imperial
14 Japanese Army. I became Foreign Minister in the
15 First KONOYE Cabinet in May 1938, succeeding to HIROTA,
16 Koki, and was Foreign Minister until I resigned in
17 September 1938. During the time that I was Foreign
18 Minister, General ITAGAKI was War Minister and
19 SHIGEMITSU, Mamoru, was Ambassador to the Union of
20 Soviet Socialist Republics.

21 "The policy of the Government of which I was
22 a member was to remain at peace with the Soviet Union
23 and to avoid war.

24 "About the middle of July 1938, as Foreign
25 Minister, I was informed by General ITAGAKI, that

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1 Soviet forces had entered the territory of Manchoukuo
2 at a point near the border of Korea. I immediately
3 sent telegraphic instructions to the Embassy in
4 Moscow, giving instructions to protest and to demand
5 withdrawal.

6 "From then until the incident was finally
7 settled I was in constant touch with the Embassy
8 sending the Ambassador instructions by telegram
9 almost daily and receiving about as many telegrams
10 from him in reply. The objective from beginning
11 to end of the Government, the Foreign Office and the
12 Ambassador was to remain at peace and to prevent
13 the incident from breaking into war. It was at first
14 proposed by the Japanese Government that the troops
15 withdraw and that after that was done, the question
16 of the border be submitted to negotiation. After
17 hostilities commenced, the Japanese Government proposed
18 the cessation of hostilities and the settlement of the
19 border by negotiation after that had been accomplished.

20 "I was kept constantly informed by SHIGE-
21 MITSU's telegrams and knew that my instructions were
22 being carried out. Through Mr. SHIGEMITSU's effort
23 an agreement was reached in Moscow for ceasing hostil-
24 ities. Hostilities ceased on the signing of the
25 agreement, and within two or three days the troops

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1 were withdrawn. Since I was of the opinion that,
2 through Mr. SHIGEMITSU's skillful and expert handling
3 of negotiations, this border incident had been prevented
4 from enlarging into general war, and causing great
5 harm to both nations, I sent him a telegram of
6 commendation and appreciation.

7 "This part of the frontier was in dispute,
8 is not clearly marked and the incident took place in
9 the disputed area.

10 "In order to avoid recurrence of such incidents,
11 Mr. SHIGEMITSU recommended the appointment of a joint
12 Soviet-Japanese Commission to settle and mark the
13 border. I concurred in his suggestion and instructed
14 him accordingly. However, since I retired shortly
15 after that and Mr. SHIGEMITSU was transferred to
16 London as Ambassador, I do not know what became of
17 the recommendation.

18 "During the incident I met with War Minister
19 ITAGAKI many times, at Cabinet meetings and five
20 Minister meetings. From all I could observe the War
21 Minister was loyal to the policy of the Government to
22 localize the incident and assisted in the efforts to
23 settle it by peaceful means as soon as possible.

24 "The appointment of Mr. SHIGEMITSU to the
25 post of Ambassador to Great Britain was made shortly

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1 prior to my resignation as Foreign Minister. At
2 that time relations between that country and Japan
3 were very delicate and required expert handling. It
4 was a promotion and did not indicate any dissatis-
5 faction with his work in Moscow. Furthermore, I had
6 heard from no one in Russia nor anywhere else that
7 the Soviet Union did not desire him as Ambassador
8 nor that that country was dissatisfied with his work.
9 I knew that he had done his best to carry out the
10 policy of the Government to remain at peace with the
11 Soviet Union, that he had been successful and there-
12 fore recommended his promotion. More important I
13 knew from his skillful handling of this incident of
14 his great ability, and I believed that if this
15 ability was transferred to London it would be bene-
16 ficial to both Japan and Great Britain.

17 "I have no copies of any of the telegrams
18 or instructions referred to in this affidavit. They
19 were official documents and for the most part in
20 cipher and therefore I kept no copies for my private
21 files. All originals, copies and drafts were filed
22 in the section of the Foreign Office in charge of
23 matters relating to the Soviet Union. From time to
24 time during the incident Foreign Office communiques
25 were issued based on the messages I received from

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1 Mr. SMIGEMITSU."

2 THE PRESIDENT: We will adjourn until
3 half-past nine tomorrow morning.

4 (Whereupon, at 1600, an adjournment
5 was taken until Tuesday, 10 June 1947, at 0930.)

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